

STATE OF VERMONT
AGENCY OF HUMAN SERVICES
Department of Vermont Health Access (DVHA)

SUBJECT: DVHA response to the comments received related to

SPA 13-009 Changes to Payments for Evaluation and Management and Vaccine Administration Services pursuant to the Affordable Care Act Effective January 1, 2013
SPA 13-011 Changes to Outpatient Hospital Rates Effective January 1, 2013
SPA 13-013 Changes to Rates in DVHA's Resource Based Relative Value System (RBRVS) Effective January 1, 2013

Response to Public Comments received as of December 26, 2012:

The DVHA received four written comments related to items in SPA 13-009, SPA 13-011 and SPA 13-013.

The DVHA appreciates all of the thoughtful comments submitted related to the proposed RBRVS methodology changes. We are addressing each of the four commenters below.

Summary of Comment #1

The commenter made distinctions between DVHA's reimbursement rates and Medicare and private payers for the same services under RBRVS as well as the perceived cost shift from public to private payers by the state's action to redirect state employees to enroll their children in Dr. Dynasaur instead of private coverage when they are eligible to do so.

The commenter made the following recommendations to the DVHA:

1. DVHA should eliminate the 2.0 percent cut that DVHA applies to all professional services, except for the evaluation and management (E&M) codes.
2. DVHA should fully adopt Medicare's Part B RBRVS reimbursement system with its single conversion factor at 100 percent of Medicare.
3. The State should rescind its offer to state employees to drop coverage for their children under their family health insurance policy and enroll them instead in Medicaid under Dr. Dynasaur.

Response to Comment #1:

With respect to the 2.0 percent cut that DVHA applies to all professional services except for E&M codes, the DVHA is required to follow the legislation in Act #1 of the 2009 Special Session and cannot eliminate this provision. As budgets are proposed for the next state fiscal year, the DVHA commits to working with the Legislature to find ways to finance the elimination of this requirement.

With respect to the recommendation to utilize one conversion factor which is at 100 percent of Medicare, we concur that it would be optimal for DVHA to do so in the same manner as implemented

by Medicare. The DVHA is limited in its ability to pay providers based on the appropriation from the state Legislature. Absent the legislative authority to use 100 percent of the single Medicare conversion factor, we have taken action in the coming year to move to a single conversion factor that pays at approximately 79.8 percent of all non-E&M services with the exception of providers who are eligible to be paid at 100 percent of Medicare for E&M services under provisions of the Affordable Care Act. Further, we have developed policies to better align with Medicare's RBRVS payment principles which, in turn, provided an aggregate increase in payments to most providers paid under DVHA's RBRVS.

With respect to the recommendation regarding diverting children of state employees to the Dr. Dynasaur program, we believe that this comment is beyond the scope of the SPAs released in our Public Notice. However, we do not disagree with the premise that DVHA's goal for setting rates for all professional services should be at or above the prevailing Medicare rate in order to reduce or eliminate the cost shift. In light of 18 V.S.A. § 9376, the DVHA is ready to work with our partners in other state leadership roles to enhance funding for professional service rates paid by the DVHA. Ultimately, however, we are dependent upon the appropriation given to us by the Legislature and must meet our obligation to contain spending within that appropriation.

Summary of Comment #2

The commenter asked why primary care did not include psychiatry and mental health services. Additionally, the commenter questioned the difference in rate changes proposed between some professionals who saw large increases (e.g., therapists and podiatrists) while psychiatry was increased only 1.1% and Ph.D. Psychologists and M.S. Psychologists are forecasted for decreases of 3.8% and 3.9%, respectively.

Response to Comment #2:

With respect to the question about including psychiatry and mental health services in primary care, we are assuming the question is directed toward why the DVHA did not include mental health services as part of the enhanced primary care set of services. The set of services eligible for enhanced payment are receiving the enhanced payment due to a 100 percent contribution from the federal government for the enhanced payment. The conditions for the State to receive this funding are predicated on the legislation in the Affordable Care Act which stipulated the specific services and provider specialties that are eligible for 100 percent federal match funding. Neither mental health services nor mental health provider specialties were included in the Affordable Care Act legislation in this provision.

With respect to the differentials in rate changes between different provider specialties, in making its policy changes to the RBRVS system for the coming year, the DVHA weighed a number of factors which included maintaining the integrity of the inputs in Medicare's RBRVS system for the DVHA's RBRVS as well as working to correct the historical payment inequities that were inherent in the DVHA's payment system, both before and after the implementation of its RBRVS.

In the past, the DVHA has utilized different conversion factors in part to mitigate fiscal changes to specific provider agencies. Mental health providers had a higher conversion factor than other specialties in prior years of our RBRVS payment system. The DVHA has continually heard from stakeholders that by not following Medicare's single conversion factor methodology, we have been undermining the balance in the RBRVS payment system. Through policy changes and enhanced federal funding, we were able to close the gap among our multiple conversion factors and move to a

single conversion factor. At the same time, this change has corrected inequities among provider specialties that were in the payment system. As a result, many provider specialties will see a substantial increase in their payments from the DVHA, even though they will still be below 100 percent of the Medicare rate.

There are only four provider specialties that will see a negative financial impact to our move to a single conversion factor—Ph.D. Psychologists, M.S. Psychologists, Chiropractors and Radiologists. These four specialties enjoyed a higher conversion factor than their peers in the prior two years of the DVHA's RBRVS payment system. We believe that the small reductions in payments to these specialties are outweighed by our other goals of establishing a single conversion factor and creating payment equity among providers.

Summary of Comment #3

Like the second commenter, this commenter also questioned the reduction in payment to Ph.D. Psychologists. It was also brought up that the published rate for Ph.D. Psychologists is modified (lowered) whereas Psychiatrists receive the full rate on file for the same service. The commenter asked if this disparity would continue in CY 2013.

Response to Comment #3:

With respect to the reduction in payments to Ph.D. Psychologists, please refer to our response to Comment #2.

With respect to the question about the modified reduction in the rate paid to Ph.D. Psychologists as opposed to Psychiatrists, the DVHA is following Medicare in implementing a modified (lower rate) paid to Ph.D. Psychiatrists and M.S. Psychiatrists. At this time, we do not anticipate a change in this payment policy.

The DVHA is aware, however, that there are significant changes to the billing codes for mental health services effective January 1, 2013 because some codes are being discontinued while new ones are being added. Our review found that many of these changes are not a one-to-one conversion from old to new code. As a result, we determined that it would be extremely difficult to accurately model all of the fiscal changes related to payment for mental health services in CY 2013. The DVHA is committed to performing continual and ongoing review of mental health services billed in the first half of CY 2013 and measure these against historical payments in order to get a more accurate picture of the total fiscal impact. We will also outreach to mental health providers to discuss these billing changes and any unintended consequences as a result of the mandatory billing code changes.

Summary of Comment #4

The commenter expressed that in many others, safety net hospitals (based on their total volume and the critical and unique nature of their services to Medicaid beneficiaries) have the highest rates to protect continued access to needed services. The commenter believes that similar criteria should be a determining factor for special rate accommodations in Vermont. The commenter states that a special rate structure to protect the long term viability of such services along with other critical access criteria should replace or compliment the broad-based geographic criteria currently in use.

Response to Comment #4:

The DVHA recognizes that not all of the hospitals in the state realize the 7.1% increase in the base rates under our OPSS system. At the time of implementation of the OPSS, discussions occurred with stakeholders about utilizing Medicare payment logic wherever feasible in DVHA's payment system for OPSS. As a result, some hospitals receive the 7.1% upward adjustment on rates while others do not. This is based on their status with Medicare. We are not proposing a change to this methodology in this SPA, but we commit to engage with hospitals on the long-term feasibility of continuing this specific payment policy.

The DVHA believes that it has effectively addressed the comments submitted. As such, we do not believe it is necessary to conduct a public meeting at this time.

It is the DVHA's intent to implement the changes as stated in SPA 13-009, 13-011 and 13-013 with no modifications. It should be noted that as of December 28, 2012, the United States Congress has not taken action on the scheduled reduction in rates paid by Medicare in its RBRVS. SPA 13-009 follows the Affordable Care Act provision for state Medicaid agencies to use a conversion factor that is the greater of the factor used in CY 2009 or CY 2013. If Congress makes a change to the CY 2013 conversion factor, and this factor is greater than the CY 2009 factor, then the DVHA will adopt the CY 2013 Medicare conversion factor for enhanced primary care payments. If Congress does not make a change to the CY 2013 conversion factor, or if the change that is made results in a value that is less than the Medicare CY 2009 conversion factor, then the DVHA will use the CY 2009 Medicare conversion factor for enhanced primary care payments.

To get more information about these State Plan Amendments go to <http://dvha.vermont.gov/administration/draft-versions-of-state-plan-changes>.